

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

WYNN RESORTS HOLDINGS, LLC,

Plaintiff,

vs.

ENCORE SPORTS LOUNGE, INC.,

Defendant.

Case No. 2:14-cv-01710-JAD-CWH

**ORDER**

Presently before the Court<sup>1</sup> is Plaintiff Wynn Resorts Holdings, LLC's Motion for Default Judgment (ECF No. 8) against Defendant Encore Sports Lounge, Inc. Having reviewed Plaintiff's motion, the Court finds that it needs additional information regarding service of process on Defendant Encore Sports Lounge, Inc. before the Court can evaluate whether it has a proper basis for jurisdiction to enter default judgment.

**I. BACKGROUND**

Plaintiff alleges that Defendant Encore Sports Lounge, Inc. is a Texas corporation. (Compl. (ECF No. 1) at 2.) In its motion for default judgment, Plaintiff states that it served Defendant by personally serving process on "Bradley Manager, who is designated by law to accept service of process on behalf of Defendant . . . at 4001 S. Sam Houston Parkway East, Houston, Texas 77047." (Mot. for Default J. (ECF No. 8) at 10.) Similarly, the process server's declaration states that the summons and complaint were served on "Bradley, Manager" at the same address. (Summons Returned Executed (ECF No. 5) at 2.) Plaintiff's motion for default judgment also indicates that

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<sup>1</sup> The undersigned magistrate judge will submit a report and recommendation regarding Plaintiff's motion for default judgment to the United States district judge assigned to this case under 28 U.S.C. § 636(b)(1).

1 4001 S. Sam Houston Pkwy East is the physical location of Encore Sports Lounge. (*See* Mot. for  
 2 Default J., Ex. I (providing examples of Defendant’s promotional materials for the Encore Sports  
 3 Lounge that list 4001 S. Sam Houston Pkwy East as its address).

4 Plaintiff’s counsel’s affidavit in support of Plaintiff’s motion for clerk’s entry of default  
 5 states that before serving “Bradley, Manager,” Plaintiff attempted to serve Defendant’s registered  
 6 agent, but that Plaintiff was unable to do so because the address on file with the Texas Secretary of  
 7 State was not current. (Request for Clerk’s Entry of Default (ECF No. 6), Ex. 1 at ¶¶ 4-6.)  
 8 Counsel’s affidavit further states that 4001 S. Sam Houston Pkwy. E. Houston, TX 77047 is an  
 9 alternate address for Defendant’s registered agent, citing a document titled “Status Update” from  
 10 the process server. (*Id.* at ¶ 7.) The process server’s “Status Update” states that the registered  
 11 agent’s address was not current, that the “[s]erver was able to get an address and is attempting  
 12 service,” and that “[s]ervice was accepted by Bradley, Manager @ 4001 S. Sam Houston Parkway,  
 13 Houston, TX.” (*Id.* at Ex. IA.) The process server’s notes do not specify, however, whether 4001  
 14 S. Sam Houston Parkway is the registered agent’s current address. (*Id.*)

## 15 **II. ANALYSIS**

16 Rule 4(h) of the Federal Rules of Civil Procedure provides, in relevant part, that a domestic  
 17 corporation must be served:

- 18 (1) in a judicial district of the United States:  
 19 (A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or  
 20 (B) by delivering a copy of the summons and complaint to an officer, a  
 managing or general agent, or any other agent authorized by appointment or  
 by law to receive service of process[.]

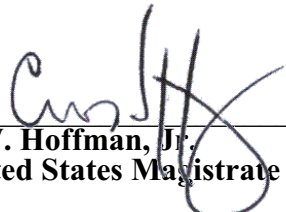
21 Fed. R. Civ. P. 4(h)(1). Rule 4(e)(1) provides that service of process that conforms with state law  
 22 “in the state where the district court is located or where service is made” is proper in federal court.

23 Here, Plaintiff’s motion for default judgment quotes the portion of Rule 4(h)(1)(B) stating  
 24 that a corporation may be served by “delivering a copy of the summons and of the complaint to an  
 25 officer, a managing or general agent, or any other agent authorized by appointment or by law to  
 26 receive service of process.” (Mot. for Default J. at 10.) The Court therefore understands Plaintiff  
 27 to be arguing that “Bradley, Manager” is either (1) an officer of Defendant Encore Sports Lounge,  
 28 Inc., (2) a managing or general agent of Defendant, or (3) another agent authorized by appointment

1 of law to receive service of process on Defendant's behalf. However, Plaintiff does not present the  
2 Court with any evidence regarding the identity of "Bradley, Manager" or other authority that would  
3 allow the Court to determine whether "Bradley, Manager" is authorized to accept service of process  
4 for Defendant. Neither the motion for default judgment nor the process server's declaration specify  
5 whether "Bradley, Manager" is Defendant's registered agent, an officer of the corporation, or  
6 another agent authorized to accept service on Defendant's behalf. (*See* Mot. for Default J.;  
7 Summons Returned Executed.) Further, based on the process server's notes in the Status Update, it  
8 is unclear whether 4001 S. Sam Houston Pkwy. E. Houston is the registered agent's current  
9 address. (*See* Request for Clerk's Entry of Default, Ex 1A.) Without additional information  
10 regarding "Bradley, Manager," the Court cannot evaluate whether Plaintiff effected proper service  
11 on Defendant and whether the Court has power to render a judgment against the Defendant. *See*  
12 *Sec. & Exch. Comm'n v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007) (stating that "service of process  
13 is the means by which a court asserts its jurisdiction over the person").

14 IT IS THEREFORE ORDERED that Plaintiff must provide the Court with a supplemental  
15 brief, including supporting evidence, regarding the authority of "Bradley, Manager" to accept  
16 service of process on behalf of Defendant Encore Sports Lounge, Inc. within 21 days from the date  
17 of this Order.

18  
19 DATED: October 14, 2015

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22 C.W. Hoffman, Jr.  
23 United States Magistrate Judge  
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